

## **CITY COUNCIL AGENDA REPORT**

**SUBJECT: EMPLOYMENT AGREEMENT BETWEEN CITY OF CALEXICO  
AND VICTORCARRILLO FOR THE POSITION OF CITY MANAGER**

**AGENDA DATE: August 4, 2009**

**PREPARED BY: Jennifer M. Lyon, City Attorney**

**RECOMMENDATION: It is recommended that the City Council approve the attached resolution and agreement.**

**FISCAL IMPACT: Salary in the amount of \$135,000.00 per year and a monthly car allowance of \$500.00 along with other management-level benefits.**

**BACKGROUND INFORMATION: On July 21, 2009 Council interviewed Mr. Carrillo for the position of city manager. Council took action on July 21, 2009 to select Mr. Carrillo for the City Manager position. Mr. Carrillo accepted the offer of employment based on the terms that Council agreed upon. Based upon Council's authorization on July 21, 2009, the City Attorney drafted the attached agreement which Mr. Carrillo signed on July 23, 2009.**

**CURRENT DISCUSSION: The attached agreement provides the negotiated terms and conditions of employment for Mr. Carrillo. This agreement is effective as of July 23, 2009 when Mr. Carrillo started work as the City Manager.**

**Attachments: Resolution and Agreement**

**RESOLUTION NO. 09-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO,  
AUTHORIZING THE APPROVAL OF THE EMPLOYMENT AGREEMENT BETWEEN  
THE CITY AND VICTOR CARRILLO FOR THE POSITION OF CITY MANAGER**

**WHEREAS**, the City of Calexico is a General Law city subject to all applicable state laws, including Government Code sections 36505 and 36506, which require appointive officers to "hold office during the pleasure of the City Council;" and

**WHEREAS**, Calexico Municipal Code section 2.02.010 makes the office of the City Manager an appointed office; and

**WHEREAS**, Mr. Victor Carrillo desires to accept employment as City Manager of the City of Calexico, California.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO,  
CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS  
FOLLOWS:**

**SECTION 1.** That the City Council finds and determines that each of the findings set forth above are true and correct.

**SECTION 2.** That the City Council hereby authorizes the Mayor to execute the Employment Agreement between the City and Victor Carrillo for the position of City Manager and that the Agreement shall be effective as of July 23, 2009.

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**DAVID B. OUZAN, MAYOR**

**ATTEST:**

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**LOURDES CORDOVA, CITY CLERK**

**APPROVED AS TO FORM:**

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**JENNIFER M. LYON, CITY ATTORNEY**

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) SS.  
CITY OF CALEXICO )

I, LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 09-\_\_\_, WAS DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CALEXICO ON THIS 4th DAY OF AUGUST 2009 BY THE FOLLOWING VOTE TO WIT:

AYES:  
NOES:  
ABSENT:

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LOURDES CORDOVA, CITY CLERK

SEAL

## **CITY MANAGER EMPLOYMENT AGREEMENT**

This Agreement, made and entered into on the 23rd date of July, 2009 by and between the **CITY OF CALEXICO**, a municipal corporation, hereinafter called "**Employer**," and **VICTOR M. CARRILLO**, hereinafter called "**Employee**," both of whom understand as follows:

WHEREAS, Employer is a General Law city subject to all applicable state laws, including Government Code sections 36505 and 36506, which require appointive officers to "hold office during the pleasure of the City Council;" and

WHEREAS, Calexico Municipal Code section 2.02.010 makes the office of the City Manager an appointed office; and

WHEREAS, Employee desires to accept employment as City Manager of City of Calexico, California;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Employer hereby agrees to employ Employee as City Manager to perform the functions and duties specified in City Ordinances, and applicable state statutes, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign. Employee will also perform the functions and duties of the Executive Director of the Community Redevelopment Agency.
2. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, subject only to the provisions set forth in paragraphs 2 and 6 of this Agreement. Employee acknowledges and understands that only three votes of the City Council are required to terminate his services and that Calexico Municipal Code sections 2.02.220 through 2.02.250 as amended on July 7, 2009 apply to this Agreement. Employee and Employer agree and understand that Employee serves at will and that Employee may be removed without cause. If Employee is terminated by the City Council during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to three (3) months aggregate salary; provided, however, that in the event Employee is terminated because the City Council finds he has committed an act involving moral turpitude or personal gain to him, then in that event, Employer shall have no obligation to pay the aggregate severance sum designated in this paragraph. "Acts" justifying termination without the payment of severance pay shall also include any acts that result in a felony or misdemeanor conviction under federal or state law. In either event, Employee shall be compensated for all accrued benefits to date, calculated at the rate of pay in effect upon termination.

3. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provisions set forth in paragraph 6 of this Agreement.
4. Pursuant to Council ratification of this Agreement on or before August 4, 2009, the terms of this Agreement shall be effective as of July 23, 2009. A start date for this employment to begin shall be July 23, 2009. As of the "start date" of this employment, Employee shall remain in the exclusive employ of Employer as required by Calexico Municipal Code section 2.02.070 and Employee agrees that all of the Municipal Code provisions pertaining to city manager as they may be amended from time to time may apply as though sections 2.02.010 and 2.02.260 were set forth herein.
5. Employee agrees that to the best of his ability and experience he will at all times loyally and conscientiously perform all of the duties and obligations either expressly or implicitly required of him by the terms of this Agreement.
6. In the event Employee resigns his position with the City, then the Employee shall not be entitled to severance pay but will receive all benefits that have already accrued as is typically paid out to other City employees upon resignation. In the event of resignation, the Employee shall give the Employer one (1) month's notice in advance.
7. Employer agrees to pay Employee for his services rendered pursuant hereto at an annual base salary of \$135,000 (One Hundred and Thirty Five Thousand Dollars) all payable in installments at the same time as other employees of the Employer are paid.
8. Employer also agrees to pay \$500.00 (Five Hundred Dollars) per month as a car allowance. Employee is responsible for all liability for personal injury and property damage, and for operation, maintenance, and repair of the automobile arising out of Employee's use of the automobile. Employee is also responsible for paying all income tax liability, whether federal or state, arising out of Employee's receipt of the automobile allowance. Employee shall submit proof to Employer of a valid driver's license and insurance for his automobile. By Employee making his personal vehicle available for use, Employee is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate. A City vehicle will be available when necessary for such use.
9. Employer agrees to increase said base salary and/or other benefits of Employee in such amounts and to such extent as the City Council may determine that it is desirable to do so on the basis of an annual performance evaluation. Any cost of living, merit or other increases in salary must be specifically authorized by Council. The City may reduce the base salary, compensation or other financial benefits of the City Manager during the term of this Agreement as part of a general city wide salary reduction in pay among management employees.

10. Employer agrees to provide certain medical, dental, prescription and optical benefits for Employee and his dependents and to pay the premiums thereon equal to that which is provided all other management employees of Employer.
11. Employer agrees to purchase and to pay the required premiums on a group life and accidental death and dismemberment insurance policy as provided other management employees of Employer.
12. Employee shall have 12 days of administrative leave per year. Sick and vacation leave shall accrue at the same rate as other management personnel of Employer. Employee is entitled to those paid holidays per calendar year that are provided to all other management employees of Employer.
13. Employee is entitled to participate in the California Public Employees Retirement (PERS) System, and Employer agrees to contribute an amount equal to that which is provided all other management non-sworn employees of Employer.
14. Employee is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of Employee's position. Employee does not have set hours of work as Employee is expected to be available at all times and shall spend sufficient hours on site to perform Employee's duties.
15. Employer will defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand, and any other legal actions arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager, except those arising out of Employee's willful misconduct. This section shall survive the termination of this Agreement.
16. All payments required under Section 2 of this Agreement are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260. The parties agree that the severance benefits due upon termination, if any, shall be the only compensation payable to Employee and are intended to compensate Employee for any damages, which could include, among other losses: the loss of opportunity to transition employment, the loss of alternate employment opportunities, the loss of income, the loss of opportunities for retraining or further education, the erosion of personal investments or savings, the loss of retirement benefits, physical displacement or the loss of residence, the loss of insurance and medical benefits, expenses for professional counseling, the loss of standard of living including educational opportunities for children, and the resultant emotional distress to the Employee and Employee's family.
17. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial

interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. Employee is subject to the conflict of interest provisions in the California Government Code and any conflict of interest code(s) applicable to the City. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment and annually thereafter, and at the time of separation from the position.

18. The City Council and Employee shall jointly define goals and performance objectives which they determine necessary for the proper operation of the City in the attainment of the City Council's policy objectives. The City Council and Employee shall establish the relative priority among the various goals and objectives in writing. Performance evaluation sessions shall be held by the City Council and Employee periodically.
19. All communication to a particular party is deemed made when received by that party at the following name and address:

City:	Attn:	Mayor City of Calexico 608 Heber Ave. Calexico, CA 92231
City Manager:		Victor M. Carrillo 2156 Raul Carrillo Court Calexico, CA 92231

20. This Agreement is binding upon and inures to the benefit of the heirs and personal representatives of Employee.
21. If any provision in this Agreement is held invalid or unenforceable, the remainder of the agreement is not affected and remains valid and enforceable.
22. This Agreement, and the state and local laws it references, constitute the sole and complete agreement between Employer and Employee. Although the state and local laws referenced in this Agreement are subject to change and are binding upon the parties without any written amendment to this Agreement, any other terms of this agreement may not be modified except by written amendment signed by Employee and approved by the City Council.

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23. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and the parties agree that venue shall be in Imperial County, California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CITY OF CALEXICO

David B. Ouzan, Mayor

EMPLOYEE

A handwritten signature in black ink, appearing to read "Victor M. Carrillo", written over a horizontal line.

Victor M. Carrillo